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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of:

Deployment of Wireline Services Offering
Advanced Telecommunications Capability

CC Docket No. 98-147

COMMENTS OF THE INTERNET ACCESS COALITION

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SUMMARY

In the Advanced Services *NPRM*, the Commission proposes an optional alternative pathway for incumbent local exchange carriers (ILECs) to offer advanced services on a largely unregulated basis. In addition, the Commission proposes strengthened collocation, loop provisioning, and loop unbundling requirements for ILECs. The Internet Access Coalition applauds the Commission for attempting to find a balanced approach to promote deployment by ILECs while providing competitive LECs the protections they need to compete effectively in providing advanced services.

With respect to the advanced services separate affiliate, the Internet Access Coalition believes that meaningful separation requirements are key to ensuring that the ILEC's advanced services affiliate competes on an equal footing with other providers of advanced services. The Coalition does not support unnecessary structural or transactional separation requirements. The Coalition supports liberal initial transfer policies to encourage the ILEC to establish the separate affiliate and begin providing services in a speedy fashion. The Coalition also urges the Commission to promote consumer choice and competition among information service providers (ISPs) as advanced services are deployed, whether the ILEC chooses to deploy advanced services on an integrated basis or through a separate affiliate.

With respect to the provision of advanced services by an ILEC on an integrated basis, the Internet Access Coalition supports the Commission's conclusion that it cannot forbear from applying the requirements of section 251(c). Nothing in the Act suggests that this requirement applies differently to networks depending on whether they are circuit-switched or packet-switched.

The Coalition supports the Commission's proposals to strengthen existing collocation, loop provisioning, and loop unbundling requirements. In particular, the Coalition supports the proposed rules regarding the availability of alternative collocation arrangements (including cageless physical collocation), collocation of packet-switching equipment, and DSL-capable loop unbundling (including CLEC access to remote terminals.) These proposals and revisions are necessary to ensure timely, competitive deployment of advanced services, particularly to residential and rural customers. The Coalition also recommends that the Commission adopt rules that would enable competition among data transport providers. Once an ILEC can demonstrate that it complies with these revised requirements, the ILEC should be permitted to provide advanced services with no requirement that it provide unbundled access to the associated electronics. Under the standard in Section 251(d)(2), access need not be required because the ability of competitors to offer advanced services would not be impaired without it.

The Commission should establish a fast-track process for evaluating ILEC requests to waive existing LATA boundaries in rural areas or to adjust them to reflect the technology, capacity, and scale economies of certain facilities used for advanced services

In order to enhance an ILEC's incentive to deploy advanced services on either an integrated basis or through a separate affiliate, the Commission should consider extending further regulatory relief to the ILEC or its affiliate when significant competitive deployment milestones for advanced services are reached. The competitive deployment milestone should ensure that a substantial percentage of households would

have the option of securing advanced services within a reasonable time from multiple providers. Once the competitive deployment milestone is achieved, the Commission should forbear from price regulation for the ILEC's advanced services and permit those ILECs who have chosen to form separate affiliates to integrate their advanced services affiliates with their other operations while remaining free of certain unbundling requirements and price regulation for their advanced services.

competitively, while keeping prices as low as possible. For ILECs who prefer to offer advanced services unencumbered by the local competition requirements of section 251(c), the Commission has identified in the *NPRM* a separate affiliate alternative that is consistent with the de-regulatory, pro-competitive policies of the Act.

Section 706 of the Communications Act of 1934 requires the Commission to determine whether advanced telecommunications services are "being deployed to all Americans in a reasonable and timely basis," and, if not, to "take immediate action to accelerate deployment of such capability by removing barriers to competition in the telecommunications market."³ By this directive, Congress recognized that the availability of advanced telecommunications services is crucial to the evolution of information technologies and the continued growth of our nation's economy. The challenge facing the Commission is to develop policies and regulations that encourage rapid, efficient deployment of advanced telecommunications services by both ILECs and competing providers and that foster the development of robust competition in the advanced services marketplace. The Coalition supports the goals of Section 706 and the Commission's effort, through the proposals in the Advanced Services *NPRM*, to begin the dialogue which is a necessary prerequisite to ensuring that these goals will be achieved.

The Coalition consists of companies and trade associations that represent all segments -- hardware, software, and services -- of the information technology industry.⁴

³ 47 U.S.C. § 706.

⁴ The Coalition's member companies joining in this pleading are: America Online, Inc., Apple Computer, Inc., Compaq Computer Corporation, Covad Communications Company, Dell Computer

The Coalition is dedicated to maintaining the affordability of consumer access to the Internet and other information services via analog, circuit-switched telephone lines, and to accelerating the deployment of efficient, affordable, and reliable broadband data communications services. Accordingly, Coalition members support the development of policies and regulations that would encourage the rapid, pro-competitive deployment of affordable broadband services by incumbent local exchange carriers and their competitors. In these comments, the Internet Access Coalition identifies refinements to the Commission's proposals that would make both options, integrated ILEC and advanced services separate affiliate, more effective for promoting deployment of advanced services, fostering competition and preserving consumer choice.

I. REGULATORY TREATMENT OF ADVANCED SERVICES AFFILIATE

In paragraphs 85 through 117 of the *NPRM*, the Commission describes the regulatory treatment it proposes for an advanced services separate affiliate, should the ILEC choose the option of deploying advanced services through an affiliate.

The Internet Access Coalition supports the pro-competitive, de-regulatory approach proposed by the Commission. The Commission properly concludes that an advanced services affiliate of an ILEC which satisfies the Commission's proposed

Company, EarthLink Network, Inc., Eastman Kodak Company, GE Information Services, IBM Corporation, Intel Corporation, Netscape Communications Corporation, Oracle Corporation, and Sun Microsystems, Inc.

The Coalition's member associations joining in this pleading are: the American Electronics Association, the Business Software Alliance, the Consumer Electronics Manufacturers Association, the Information Technology Association of America, the Information Technology Industry Council, the

structural separation requirements and invests in the deployment of the facilities needed to provide advanced services is "generally not an ILEC" and therefore not subject to the requirements of section 251(c).⁵ Like any other telecommunications or local exchange carrier, of course, such an affiliate would nevertheless remain subject to the requirements of section 251(a) and (b).⁶

The Commission's proposed de-regulatory treatment of an ILEC advanced services affiliate is not only consistent with the express language of the statute but also strikes the proper balance among competing policy objectives. On the one hand, the Commission must permit ILECs to put their considerable expertise and resources to work in the marketplace to ensure that advanced services are deployed as quickly and efficiently as possible. At the same time, the Commission's rules must be consistent with the development of a competitive marketplace in which competitors are free to enter the market and provide advanced services in competition with the ILECs. By identifying a separate affiliate option that would permit ILECs to enter the advanced services market unencumbered by the requirements of Section 251, the Commission has properly balanced these competing concerns.

The Coalition supports the Commission's tentative conclusion that the advanced services affiliate should, to the extent it provides interstate exchange access services, be presumed to be nondominant and should not be subject to price cap or rate of return

Semiconductor Industry Association, the Software Publishers Association, and the Voice on the Net Coalition. Collectively, these associations represent more than 12,000 member companies.

⁵ Advanced Services NPRM at para. 92.

⁶ *Id.*

regulation nor required to file tariffs for its provision of such services.⁷ These requirements have historically been applied to ILECs to ensure that they offered their services at just, reasonable, and non-discriminatory rates. Those requirements are not necessary, however, if the Commission adopts its proposed structural and transactional requirements for the separate affiliate and the more detailed collocation, loop provisioning, and loop unbundling requirements proposed in the *NPRM*. These requirements should ensure that the advanced services marketplace is subject to competitive forces sufficient to discipline the affiliate's pricing behavior and ensure that the affiliate is unable to take unreasonable advantage of the market power wielded by the ILEC. The combination of competitive pressures to discipline the affiliate's pricing behavior and vigorous enforcement of the separation, non-discrimination, collocation, loop provisioning, and loop unbundling requirements proposed in the *NPRM* should discipline the relationship between the ILEC and its affiliate and curtail anti-competitive incentives. With this combination of forces at work on the ILEC's advanced services offerings, regulatory oversight through rate regulation and tariffing should not be necessary to ensure that the Act's requirements and objectives are met and consumers are protected.

For similar reasons, the Coalition opposes any limit on the ability of the advanced services affiliate to either resell telecommunications services offered by the ILEC or to purchase unbundled network elements ("UNEs") from the ILEC.⁸ Section

⁷ *Id.* at para. 100.

⁸ *Id.* at para. 101.

251(c)(3) states that each ILEC has the duty to provide access to unbundled network elements to any requesting telecommunications carrier for the provision of a telecommunications service.⁹ As an initial matter, the *NPRM* identifies no statutory or policy basis for attempting to impose limitations on the availability of UNEs to all carriers under this provision. More importantly, the additional limitations appear to be unnecessary because the requirements proposed by the Commission -- structural and transactional separation, collocation, loop provisioning and loop unbundling -- should be sufficient to ensure that the advanced services affiliate competes on an equal footing with other providers of advanced services.

In addition, limitations on the affiliate's ability to purchase UNEs or resell ILEC services would create unnecessary barriers to the deployment of advanced services by the affiliate. If the affiliate can provide service through the purchase of unbundled network elements or resale, it would be able to enter the market as quickly and efficiently as its competitors. Without these options, the ILEC would have the ability and incentive to provide advanced services through a separate affiliate only where it is economic to build an independent network, seriously limiting the role ILECs could play in the market for advanced services. And even where the ILEC established such an

⁹ 47 U.S.C. § 251(c)(3). The Commission concluded that the Act does not prohibit a section 272 affiliate from providing local exchange services in addition to interLATA services. See Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, *First Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 96-149, FCC 96-489 (rel. Dec. 24, 1996) ("Non-Accounting Safeguards Order") at para. 312. The advanced services affiliate, like other carriers, may purchase UNEs for exchange service as well as advanced services.

affiliate, the affiliate would operate at a competitive disadvantage compared to other providers who would have the option of purchasing UNEs or providing resold services.

Limitations on the ability of an ILEC advanced services affiliate to purchase UNEs could also impair and delay the market entrance of competitors. As discussed below, the emergence of competing alternative providers of advanced services is dependent upon the strong collocation, loop unbundling, and loop provisioning requirements proposed by the Commission in the *NPRM*. If the ILECs' advanced services affiliates are permitted to provide service by purchasing UNEs and co-locating equipment as necessary, the ILECs will have a powerful incentive to negotiate reasonable interconnection and unbundling arrangements to which unaffiliated competitors will have access pursuant to the Commission's proposed nondiscrimination requirements. This added incentive to establish reasonable collocation and interconnection agreements will provide a powerful, self-executing mechanism for ensuring that entry strategies based on resale and the use of UNEs are available to competitive service providers.

Finally, the Coalition urges the Commission to clarify the regulatory status of an ILEC advanced services affiliate under Title II of the Communications Act. The combination of: (1) the Commission's observation that the advanced services separate affiliate remains subject to sections 251(a) and 251 (b)(1); and (2) the Commission's analysis of the nondominant status of the advanced services separate affiliate, indicates that the affiliate would otherwise be subject to the remaining provisions of Title II. In a fully competitive market, traditional common carrier regulation of the rates, terms and conditions through which any carrier provides services would not be

necessary. The Coalition eagerly anticipates the emergence of just such a competitive, fully de-regulated market. To protect the development of competition in the meantime, however, the Commission must retain its jurisdiction to enforce certain basic requirements of Title II with respect to the advanced services affiliate. The Commission should therefore confirm, in addition to what it has already stated regarding the application of Sections 251(a) and (b), that the advanced services affiliate will be subject to the requirements of Sections 201, 202, and 208 of the Act¹⁰ as well as the general obligation of common carriers to allow resale, for example, of stand-alone advanced services by subscribers and unaffiliated ISPs.¹¹

II. PROMOTING CONSUMER CHOICE AND COMPETITION AMONG ISPS AS ADVANCED SERVICES ARE DEPLOYED

In addition to the general regulatory requirements described above, the Coalition urges the Commission to take certain additional steps to ensure there are no anti-competitive spill-over effects in the information services market that will undermine consumer choice and competition among ISPs as advanced services are deployed.¹² Specifically, the provision of advanced services by the ILEC, whether directly or through a separate affiliate, cannot be permitted to degrade the robust competition that now exists in the ISP market, whether by limiting the availability of advanced services to only

¹⁰ 47 U.S.C. § 201 (just and reasonable charges, practices); 47 U.S.C. § 202 (nondiscrimination); 47 U.S.C. § 208 (complaints).

¹¹ See Regulatory Policies Concerning Resale and Shared Use of Common Carrier Facilities, *Report and Order*, 60 FCC 2d 261 (1976), *recon.* 62 FCC 2d 588 (1977), *aff'd sub nom. AT&T v. FCC*, 572 2d 17 (2nd Cir. 1978), *cert. Denied*, 439 U.S. 875 (1978)

¹² Advanced Services NPRM at para. 102.

those customers who also order the affiliate's ISP offerings, by improper cross-marketing, by delaying service provisioning and installation to competitors, by "ISP slamming," or by steering consumers to the ILEC affiliated ISP.¹³

The existence of adequate safeguards to promote the continued competitive ISP market is a critical issue that the Commission cannot ignore in this proceeding. The Commission has a variety of regulatory tools to ensure that the ISP market remains robust and open, free from unreasonable and anti-competitive cross-subsidies or discriminatory pricing and provisioning. These mechanisms range from accounting safeguards to complete structural separation.¹⁴ To foster open and full consumer choice among ISPs, should the ILECs choose to offer advanced services through

¹³ ISPs have already begun to report discriminatory treatment by ILEC's in the provision of DSL services. In an article describing Bell Atlantic's plans to introduce DSL services, ISPs charged that Bell Atlantic has not been forthcoming about how unaffiliated ISPs can offer the service. See Mike Musgrove, "ADSL: Surf's Up?" Washingtonpost.com: Wash. Tech (Sept. 4, 1998). In addition, Minnesota's Attorney General's Office has filed a complaint with the state public utility commission accusing US West of discriminating against unaffiliated ISPs. See Martin J. Moylan, "US West's Internet Service Stifles Competition, Minnesota Charges," Knight-Ridder Tribune Business News: Saint Paul (Minn.) (Sept. 11, 1998). Finally, US West's rollout of high speed Internet services was delayed in Oregon since April because of questions about competition with Internet service providers. In approving the rollout, the Oregon PUC reserved the right to halt the rollout if anti-competitive problems develop. See Commission Approves US West's Internet Service," Press Release, Oregon Public Utility Commission (rel. Sept. 15 1998).

¹⁴ See, e.g., *Non-Accounting Safeguards Order*, *supra* note 9; *Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996*, Report and Order, CC Docket No. 96-150, 11 FCC Rcd 17539 (1996) ("*Accounting Safeguards Order*") (*recons. pending*); 2 FCC Rcd 3035 (1987), *further recon. denied*, 4 FCC Rcd 5927 (1989); *Third Computer Inquiry*, Phase II, 2 FCC Rcd 3072 (1987), *recon. den.*, 3 FCC Rcd 1150 (1988), *further recon. den.*, 4 FCC Rcd 5927 (1989), *remanded sub nom. California v. FCC*, 905 F.2d 1217 (9th Cir. 1990); *on remand, Computer III Remand Proceedings*, 6 FCC Rcd 7571 (1991), *vacated in part and remanded sub nom. California v. FCC*, 39 F.3d 919 (9th Cir. 1994); *on remand, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, CC Docket No. 95-20, and 1998 *Biennial Regulatory Review – Review of Computer III Safeguards and Requirements*, CC Docket No. 98-10, Further Notice of Proposed Rulemaking, FCC 98-8 (rel. Jan. 30, 1998) ("*Computer III Further Notice*").

separate affiliates,¹⁵ the Commission should, at a minimum, adopt the following requirements:

- 1) *Require the advanced services separate affiliate to offer stand-alone advanced services on a non-discriminatory basis if it offers such services bundled with affiliated ISP offerings.*¹⁶ This requirement would promote consumer choice, including by allowing end-users to obtain broadband service from the advanced services separate affiliate and Internet service from an unaffiliated provider. It would also allow independent ISPs to market a bundled package of Internet and advanced services just as the affiliate could do.
- 2) *Require "equal access" to broadband services for information service competitors.* In order to promote competition and diversity for consumers in their choices among ISPs, the Commission must also require equal treatment for unaffiliated ISPs, including by prohibiting degradation in service quality to independent ISPs and by barring the discriminatory dissemination of provisioning, line qualifying and other information to affiliated ISPs.

¹⁵ The Coalition also expects the Commission will ensure nondiscrimination among ISPs when the ILEC deploys advanced services on an integrated basis.

¹⁶ An advanced services affiliate operating independently to maximize its revenues would, under normal market incentives, offer its advanced services to unaffiliated ISPs so that the ISPs could offer a bundled offering. Indeed, an affiliate's failure to make advanced services available on a stand-alone to independent ISPs would provide a valid basis for the Commission to question whether the ILEC and its affiliate are maintaining the level of separation required to qualify for the Commission's proposed deregulatory treatment. Accordingly, the Commission should adopt a presumption that the advanced services affiliate is not operating independently from the ILEC and, accordingly, is not eligible for the deregulatory treatment proposed in the *NPRM*, if the affiliate refuses to make advanced services available

- 3) *Prescribe provisioning and service quality standards.* Moreover, in order for the "equal access" requirement to have meaning, the Commission should prescribe provisioning and service quality standards that will apply to all ISPs, whether affiliated or not, as well as incumbent LEC reporting requirements for such standards. In this way, monitoring by the Commission and other interested parties will serve a "check" against potential anti-competitive practices.
- 4) *Require "truth-in-marketing" disclosures.* Unless consumers are informed of their ability to choose freely among ISPs, the ILEC's deployment of advanced services could impede the development of competition in the broadband context analogous to that which exists in the narrowband context. As such, any separate data affiliate should be required to disclose that their advanced services can be purchased on a stand-alone basis to connect the customer to the ISP of his or her choice. Moreover, no express or implied preferences, including by "directing" the customer, should be given to the ILEC's ISP affiliate.

III. SEPARATION REQUIREMENTS FOR ADVANCED SERVICES AFFILIATE TO AVOID REGULATION AS AN ILEC

A. Separation Requirements for ILEC Affiliates

The Coalition supports the imposition of reasonable separation requirements for an advanced services affiliate in order to permit the ILEC affiliate to deploy advanced

on a non-discriminatory, stand-alone basis.

services on a competitive basis.¹⁷ Meaningful separation of the ILEC from its advanced services affiliate is a useful means of assuring that the statutory requirements of Section 251 are met when the ILEC chooses to provide advanced services through a separate affiliate.

As a general matter, however, the Coalition believes that the Commission should avoid overly onerous separations requirements that could discourage the reasonable deployment of advanced services by the ILECs. The Commission should consider whether any separation requirements it may establish could be loosened at some future point in response to the impact of the Commission's strengthened collocation, loop unbundling, and loop provisioning rules, other marketplace developments, and technological evolution. The Coalition does not, however, support a sunset mechanism triggered solely by the passage of time. Instead, as discussed in Section V, *infra*, the Coalition proposes to link further regulatory relief to deployment of advanced services by both ILECs and competing providers.

B. Asset Transfers from an ILEC to an Advanced Services Affiliate

The Coalition agrees with the Commission's tentative conclusion that certain asset transfers between an ILEC and its advanced services affiliate would require the advanced services affiliate to be treated as a successor or assign of the ILEC pursuant to Section 251(h)(1)(B)(ii) of the Act and would accordingly be subject to ILEC regulation (e.g., section 251(c) of the Act).¹⁸ Some ILECs, however, appear to have

¹⁷ Advanced Services NPRM at para. 96.

¹⁸ *Id.* at paras. 104-114.

implemented plans to deploy advanced services before the Commission announced its proposed regulatory framework for the advanced services affiliate. In order to provide ILECs with a meaningful opportunity to evaluate competing structural models and make a selection based on economically efficient business considerations, the Coalition urges the Commission to adopt its proposals for less restrictive transfer standards during an initial start-up period that will allow the ILEC to establish a separate affiliate that avoids status as a successor or assign.¹⁹ The Commission's proposed approach will enable ILECs to implement reasonable existing deployment plans with a minimum of delay and disruption.

1. Initial Start-Up Period/*De Minimis* Exception

The Coalition supports the Commission's proposal to allow ILECs to transfer the network elements used in the central office specifically to provide advanced services, including packet switches, DSLAMs, ethernet hubs, racking, cabling, and splitters. The Coalition opposes allowing ILECs to transfer interoffice transport facilities due to the scarcity of such resources for all services. In addition, the Commission should not permit the transfer of loops, including advanced services equipment in remote terminals, or other network elements used for services other than advanced services that the ILEC is currently required to provide on an unbundled basis.²⁰ The Commission should clarify that transfers of such network elements will automatically

¹⁹ *Id.* at para. 108.

²⁰ See 47 C.F.R. §51.319 (requiring ILECs to provide the following network elements on an unbundled basis: local loops and remote terminals, network interface devices, local and tandem switching capability, interoffice transmission facilities, signaling and call-related databases, operations support systems, operator services, and directory assistance facilities)

result in classification of the ILECs' advanced services affiliate as a successor or assign of the ILEC, subject to ILEC regulation.

The *NPRM* identifies other assets for which the Coalition believes transfer would be appropriate. With regard to existing customer accounts, the Commission rules should distinguish between the customer accounts of existing advanced services customers and the ILEC's voice customers. No anti-competitive impact would result if the ILEC were permitted to transfer advanced services customer accounts, while a prohibition on such transfers would unfairly penalize those ILECs who have already begun to deploy advanced services. The Coalition does not support allowing ILECs to transfer the customer accounts of local exchange customers, however. Transfer of these accounts would enable the ILECs to unfairly leverage its monopoly power to the benefit of the advanced services affiliate and with substantial risk of competitive injury to other providers of advanced services.

With respect to the transfer of CPNI, the Coalition is concerned about the competitive effects in the ISP market if ILECs or their advanced services affiliates were permitted to use CPNI derived from the local service market to market advanced services, and in particular, advanced services bundled with information services. For this reason, the Internet Access Coalition would only support the transfer of customer proprietary network information to the extent already permitted by the Commission's rules.²¹ The Commission's CPNI rules permit carriers to use CPNI, without prior customer approval, to market offerings that are "related to, but limited by," the

²¹ Advanced Services NPRM at para. 113.

customer's existing service relationship with their carrier. Moreover, the Coalition urges the Commission to conclude that the provision of advanced services, even advanced services that constitute local exchange service, exceeds the bounds of the ILECs' existing customer relationships for local service.

The Coalition supports, however, a one-time transfer of ILEC employees to the advanced services affiliate, a one-time transfer of funds from the corporate parent to the advanced services separate affiliate and the use of the ILEC's brandname by the advanced services affiliate. None of these transfers can skew the competitive playing field and each would permit more rapid, efficient deployment of advanced services by the ILEC.

The Commission should establish a reasonable schedule for the *de minimis* exceptions described above. During an initial start-up period following adoption of Commission rules, the Commission should allow the ILECs to transfer to their advanced services affiliates equipment that has already been purchased, whether or not the equipment has been installed, and equipment that is purchased during the initial start-up period.²² A reasonable time frame will avoid penalizing ILECs for steps they have already taken to deploy advanced services. The Coalition supports the Commission's proposal of a six month period.²³ The period should begin with the issuance of a final order in this proceeding because that is when ILECs will be certain of the applicable requirements for establishing a separate affiliate

²² *Id.* at para. 108.

²³ *Id.* at para. 109.

Consistent with the proposal in the *NPRM*, the separate affiliate should be allowed to leave installed equipment in place at the ILEC's premises.²⁴ Installed equipment should not be transferred to the separate affiliate, however, unless and until space for collocation by competitors who have requested collocation is made available in that central office, including through alternative collocation arrangements such as cageless collocation. For all future allocations of collocation space, the separate affiliate should be treated no differently from other competitive LECs. This approach reasonably balances the objectives of rapid, efficient deployment and the development of a competitive market.

Finally, during the initial start-up period, the Commission should exempt the transfers described above from the nondiscrimination requirement the Commission proposes to apply otherwise to the ILEC's treatment of its advanced services affiliates.²⁵ The purpose of the *de minimis* exemption is to permit ILECs to establish viable providers of advanced services quickly, efficiently, and pro-competitively. A requirement that the ILEC make transferred assets available to others on the same terms and conditions would be tantamount to preventing the ILEC from freely transferring the assets required by the affiliate to deliver service, undercutting the economic feasibility of using a separate affiliate

²⁴ *Id.* at para. 110.

²⁵ *Id.* at para. 111.

2. Transfers Made on an Ongoing Basis

Once the initial start-up/*de minimis* period expires, ILEC transfers of the assets discussed above should create a presumption that the advanced services separate affiliate is a successor or assign of the ILEC. In particular, the Commission should not permit ILECs to transfer employees back and forth between the ILEC and its advanced services affiliate. With respect to funds transferred from the corporate parent, the Commission should conclude that such transfers may be relevant to the determination of whether the advanced services affiliate a successor or assign of the ILEC and permit ILECs to make case-by-case showings that such transfers should not be determinative of the affiliate's status. Finally, the Coalition believes that existing network disclosure rules are sufficient to give competitors notice of any network changes that may result from the transfers permitted under the circumstances described above.²⁶

IV. ADDITIONAL MEASURES TO PROMOTE LOCAL COMPETITION

A. Collocation

The Coalition urges the Commission to adopt the proposals in the *NPRM* for strengthening the collocation requirements adopted in the Commission's Local Competition Order.²⁷ The Coalition strongly supports the Commission's proposed rules

²⁶ *Id.* at para. 115.

²⁷ *Id.* at paras. 118-150. See 47 C.F.R. § 51.323. See also *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (1996) ("Local Competition Order"), vacated in part sub nom. *Iowa Utilities Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), amended on rehearing sub nom. *California Public Utilities Comm'n v. FCC*, 124 F.3d 934 (8th Cir. 1997), writ of mandamus issued sub nom. *Iowa Utilities Bd. v. FCC*, No. 96-3321 (8th Cir. Jan. 22, 1998), cert. granted sub nom. *AT&T Corp. v. Iowa Utilities Bd.*, Nos. 97-286, 97-829, 97-830, 97-831, 97-1075, 97-1087, 97-1099 and 97-1141 (U.S. Jan. 26, 1998)

regarding the availability of alternative collocation arrangements (including cageless physical collocation), collocation of packet-switching equipment, and DSL-capable loop unbundling (including competitive LEC access to remote terminals.) These rules are necessary to ensure ubiquitous and open competition for advanced services and are therefore a pre-requisite to any regulatory relief granted to ILECs or their affiliates. The Coalition believes that the record in this proceeding will demonstrate that these arrangements are not only technically feasible but also will be much less costly and more efficient than current collocation ILEC collocation practices. Collocation of equipment with switching functionality, for example, could reduce the cost of achieving network redundancy and management. Availability of alternative collocation arrangements, including cageless physical collocation, will spur entry into low-income, residential and rural areas.

Collocation is a critical pre-requisite for many potential competitors in the local exchange market and is especially important for the competitive offering of xDSL service, the current technological front-runner for providing broadband service to low-volume business and residential locations over existing telephone networks. Because xDSL services are delivered by combining electronics in end offices or remote terminals with existing copper loops, the rapid deployment of this technology for consumer services is particularly dependent upon reasonable and timely access to end office collocation space. As a result, the reasonable availability of physical collocation, including the alternative arrangements proposed, is a necessary prerequisite to any regulatory relief granted to ILEC provision of advanced services.

The *NPRM* properly recognizes a variety of potential collocation-based entry barriers and opportunities for anti-competitive practices that new entrants have identified as they seek to implement the Act's local competition requirements and the Commission's collocation rules. The Commission should announce, monitor, and rigorously enforce a strict policy towards collocation practices and procedures that hinder emerging competitive providers of xDSL and other broadband technologies dependent upon collocation. If the record developed in this proceeding demonstrates the need for more effective collocation requirements and more aggressive enforcement of collocation rights, the Commission should not hesitate to re-vamp its rules and policies accordingly.

B. Loops

For the same competitive reasons as those identified in the case of collocation, the Coalition urges the Commission to adopt the more detailed and pro-competitive requirements for loop access that it proposes in the *NPRM*.²⁸ In particular, the Commission's focus on issues associated with digital loop carrier ("DLC") systems is critical to the future of competition for advanced services. Therefore, like alternative physical collocation arrangements, these clarifications of the ILEC's obligation to provide unbundled DSL-capable loops should be a necessary prerequisite to any additional regulatory relief for ILEC provision of advanced services.

The Coalition supports the Commission's inquiry with respect to the feasibility of loop spectrum management. The Coalition believes the Commission's proposals could

enable more competitive entry into local markets, establish more competitive options for other providers of advanced services, and produce additional choice for consumers.

The Coalition shares the Commission's concerns, however, regarding possible technical and operational problems that could limit the usefulness of shared spectrum approaches to advanced services and will closely review the factual record developed in this proceeding by parties with technical expertise on the issue.

C. Unbundling

The Coalition supports the Commission's conclusion that ILECs are required to unbundle loops capable of transporting high-speed digital signals since high speed services will be impossible without access to such loops.²⁹ Delineating these requirements and ensuring the actual availability of these DSL-capable loops through functioning OSS is absolutely necessary for competitive providers of advanced services to emerge.

In addition, the Coalition agrees with the Commission's conclusion that the facilities and equipment used to provide advanced services are network elements within the meaning of Section 251 of the Act.³⁰ As a result, ILECs are subject to the obligations imposed by that section with respect to the unbundling of elements unless the Commission concludes that a failure to provide access to the element would not impair the ability of advanced services carriers to provide their services.³¹ The Coalition

²⁸ Advanced Services NPRM at paras. 151-177.

²⁹ *Id.* at para. 178.

³⁰ *Id.*

³¹ Local Competition Order, *supra* note 27, at para. 279.